

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LYLE A. WIXOM,

Plaintiff,

-vs-

IMCO GENERAL CONSTRUCTION INC.,

Defendant.

NO. CV-12-0413-LRS

ORDER DENYING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

BEFORE THE COURT is Plaintiff Lyle A. Wixom's Motion For Partial Summary Judgment (ECF No. 16) filed on December 10, 2012. An oral argument was held March 6, 2013 in Spokane. Thomas Jarrard participated on behalf of the Plaintiff; Marcus Louvier participated on behalf of Defendant. The Court having considered the oral and written argument of counsel, enters this Order to memorialize the oral rulings of the Court. Accordingly,

**IT IS ORDERED** that:

1. Plaintiff's Motion for Partial Summary Judgment, **ECF No. 16**, is **DENIED**. The Court found that as to Wixom's reemployment claim pursuant to 38 U.S.C. §4312, Plaintiff successfully met his burden that he (a) gave prior notice of his military service, (b) served over 30 days, (d) served honorably, and (e) served less than five years. Based on the

1 record currently before the Court,<sup>1</sup> there exists factual issues in  
2 dispute regarding the giving of notice of his intent to return to work.  
3 Further, the Court additionally finds a material question of fact  
4 regarding the affirmative defense argued by Defendant in this case (the  
5 employer's circumstances have so changed as to make such reemployment  
6 impossible or unreasonable) pursuant to the exemption in 38 U.S.C.  
7 §4312(d)(1)(A).

8 2. Plaintiff's Objections to the Declarations of Courtney Imhof,  
9 Thomas Pike, and Christopher Kerley; Motion to Strike, or in the  
10 Alternative, Adjudging the Declarant Courtney Imhof in Contempt and  
11 Awarding Sanctions, **ECF No. 54**, is **DENIED, without prejudice** to renew.

12 **IT IS SO ORDERED.**

13 The District Court Executive is directed to file this Order and  
14 provide copies to counsel.

15 **DATED** this 11th day of March, 2013.

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17 ***s/Lonny R. Suko***

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19 LONNY R. SUKO  
20 UNITED STATES DISTRICT JUDGE  
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<sup>1</sup>Plaintiff filed a Motion to Amend Complaint (ECF No. 59) on March 7, 2013, after the hearing, and noted for April 5, 2013.